UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN STANTON,	:	
	:	
Plaintiff,	:	
	:	
	:	
v.	:	Civil Action No. 95-1952
	:	
	:	
DISTRICT OF COLUMBIA COURT OF APPEALS,	:	FILED APR 28 1999 NANCY MAYER-WHITTINGTON, CLERK
	:	
Defendant.	:	

MEMORANDUM

Plaintiff is a suspended attorney who asserted constitutional challenges to substantive provisions of the District of Columbia Rules of Professional Conduct and to procedures governing reinstatement. The Court of Appeals affirmed the dismissal of defendant's substantive First Amendment claims but remanded two other claims alleging violations of due process. Stanton v. District of Columbia Court of Appeals, 127 F.3d 72 (D.C. Cir. 1997), reh'g denied (Dec. 3, 1997). Now before the court is defendant's motion to dismiss filed December 27, 1997, and plaintiff's motion to amend his complaint filed April 7, 1999.[1]

---

[1] During eleven of the sixteen months that have elapsed since the filing of the instant motion to dismiss, plaintiff has been seeking my recusal, by motion filed in this Court and by petitions for mandamus filed in the Court of Appeals and in the Supreme Court. I did not consider it appropriate to rule on the pending motion while these motions and petitions were pending.

Set forth below are the reasons for an order, entered today, denying plaintiff's motion to amend and granting defendant's motion to dismiss.

The District of Columbia Court of Appeals has promulgated rules regulating the District of Columbia's unified bar pursuant to legislative authority delegated to it by Congress. See 84 Stat. 473, 521 (1970), codified at D.C. Code 11-2501(a). Count 1, the first of the two remanded counts, asserts that the rule establishing the Board on Professional Responsibility (BPR) and describing its duties, District of Columbia Rule of Professional Conduct XI (4) (1990), deprives Mr. Stanton of due process. Because Count 1 addresses the promulgation or content of rules, the defendant is absolutely immune from suit under this claim. Supreme Court of Virginia v. Consumers Union, 446 U.S. 719 (1980).

In Count 2, Mr. Stanton asserts that the Bar's rules concerning disciplinary and reinstatement actions, District of Columbia Rules of Professional Conduct XI (9) and XI (16) (1990), deprive him of due process. This claim is not barred by the absolute immunity recognized in the Consumers Union case because it is more about the application or enforcement of rules than about promulgation or conduct, but it is not a claim upon which relief may be granted. Mr. Stanton cannot pursue the claim as it relates to rulings in his own case because of the Rooker-Feldman doctrine. See generally Rooker v. Fidelity Trust, 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). His fallback position, that discovery would reveal that the D.C. Court of Appeals generally gives undue deference to the rulings of the Board on Professional Responsibility, fares no better. The prospect of discovery to determine why appellate courts decide as they do is tempting to a trial judge, but, of course, it is a pipe dream. We can only consult the opinions of

courts to construct their thought processes. The degree of deference paid by the D.C. Court of Appeals to the BPR can be discovered, for example, in In the Matter of James, 452 A.2d 163, 169 (D.C. 1982), and in In re Roundtree, 503 A.2d 1215, 1217 (D.C. 1985). From anything that appears in the published cases, it seems that the D.C. Court of Appeals is doing what courts of appeals are supposed to do: confronting one case at a time. Nothing suggests undue deference.

Even if Mr. Stanton had evidence of undue deference by the D.C. Court of Appeals to BPR decisions, he would not have standing to pursue his generalized due process claim. See Richardson v. D.C. Court of Appeals, 83 F.3d 1513, 1516 (D.C. Cir. 1996).

The proposed amended complaint lodged with plaintiff's latest motion to amend would replace existing count 2 ("Deprivation of Right to Due Process of Law") with a different count 3 ("Deprivation of Right to Due Process of Law"). The proposed new version would essentially abandon the generalized claim discussed above and replace it with a claim that the D.C. Court of Appeals has failed to consider and adjudicate Mr. Stanton's allegations of due process in his own case. This count mentions 42 U.S.C. § 1983 in passing, but Mr. Stanton may not bring such a claim under § 1983 against a court. Stump v. Sparkman, 435 U.S. 349, reh'g denied 436 U.S. 951 (1978); cf. Forrester v. White, 484 U.S. 219, 227 (1988). Such a claim would in any event run straight into the Rooker-Feldman doctrine again.

An appropriate order accompanies this memorandum.

JAMES ROBERTSON
United States District Judge

Dated: April 28, 1999

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN STANTON,	:	
	:	
Plaintiff,	:	
	:	
	:	
v.	:	Civil Action No. 95-1952
	:	
	:	
DISTRICT OF COLUMBIA	:	FILED
COURT OF APPEALS,	:	APR 28 1999
	:	NANCY MAYER-WHITTINGTON, CLERK
Defendant.	:	

ORDER

For the reasons set forth in a memorandum issued today, it is on this 28th day of April, 1999,

ORDERED that plaintiff's motion for leave to file amended complaint is denied. And it is

FURTHER ORDERED pursuant to F.R.Civ.P. 12(b)(6) that defendant's motion to dismiss is granted. This case is dismissed.

JAMES ROBERTSON
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 99-7093

September Term, 1999
95cv01952

John Stanton,
Appellant

v.

District of Columbia Court of Appeals,
Appellee

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
OCT 20 1999
CLERK

BEFORE: Silberman, Henderson, and Tatel, Circuit Judges

ORDER

Upon consideration of the motion for summary reversal, the opposition thereto, and the reply; and the motion for summary affirmance, the opposition thereto, and the reply, it is

ORDERED that the motion for summary affirmance be granted, and the motion for summary reversal be denied. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc., v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627 F.2d 541, 545 (D.C. Cir.) (per curiam) cert. denied, 449 U.S. 994 (1980).

Because appellee's motion for summary affirmance accompanied its timely response to appellant's motion for

summary reversal, appellant's argument that the motion for summary affirmance should be denied as untimely is without merit. See Fed. R. App. P. 27(a)(3)(B). With respect to the district court's denial of appellant's two motions for disqualification, appellant has offered no evidence to demonstrate that the district court's rulings "display a deep-seated favoritism or antagonism that would make fair judgment impossible." See Liteky v. United States, 510 U.S. 540, 555 (1994). Nor has appellant shown that the district court judge's status as past president of the D.C. Bar resulted in impermissible bias. See United States v. Morrison, 153 F.3d 34, 48 (2d Cir. 1998). Accordingly, the district court's determinations were not an abuse of discretion. See United States v. Pollard, 959 F.2d 1011, 1031 (D.C. Cir. 1992).

In regard to appellant's motions to amend his complaint, any error committed by the district court in failing to allow appellant to amend his complaint once as a matter of right was harmless. Cf. Bowden v. United States, 176 F.3d 552, 555 (D.C. Cir. 1999). Appellant's proposed revisions to his existing due process claims were unnecessary as they changed neither the factual allegations nor the legal theory of the complaint. Moreover, the district court correctly concluded that appellant's revised First Amendment and new due process claims are barred by the Rooker-Feldman doctrine. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 415 (1923) (federal courts lack jurisdiction to review decisions by state and District of Columbia courts).

With respect to the dismissal of appellant's remanded claims, the district court correctly determined that appellant's claim concerning the "undue construction

and improper operations" of the Board on Professional Responsibility under D.C. Bar Rule XI-4 is barred by legislative immunity. See Supreme Court of Virginia v. Consumers Union of the United States, 446 U.S. 719 (1980). Further, the district court correctly dismissed appellant's challenge to the review procedures for disciplinary and reinstatement proceedings because appellant's claim that appellee unduly defers to Board decisions is refuted by facts of public record. See Phillips v. Bureau of Prisons, 591 F.2d 966, 969 (D.C. Cir. 1979). Finally, the district court did not abuse its discretion in staying discovery on appellee's motion to dismiss. See Willoughby v. Potomac Elec. Power Co., 100 F.3d 999, 1003 (D.C. Cir. 1996).

The clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 99-7093 September Term, 1999
95cv01952

John Stanton,
Appellant

v.

District of Columbia Court of Appeals,
Appellee

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED

DEC 28 1999

CLERK

BEFORE: Silberman, Henderson, and Tatel, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing filed November 18, 1999, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:
Robert A. Bonner
Deputy Clerk